IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18317 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL WAGHABHAI DALABHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR DK ACHARYA for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3
MR.SATYAM CHHAYA, ASST GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 21/08/2007

ORAL JUDGMENT

Rule. Mr.Satyam Chhaya, learned Assistant Government Pleader waives service of rule. With the

consent of the learned advocates the matter is taken up for final disposal.

2. The present petition is filed by the heirs and legal representatives of the deceased-Patel Dala Kumbha, who purchased the land in question, i.e. Survey No.339 of Village Dethali, admeasuring 8 acres, 39 gunthas of Village Dethali, Taluka Vav prior to 1976 by registered sale deed baring no.969. The sale transaction was recorded by entry no.193 dated 25.08.1976 and was confirmed on 01.06.1978.

3. The parties rested with the aforesaid transaction. It was only in the year 1999 that a team examining '*Hak Patrak*' (revenue record) raised a case for breach of condition (Shart Bhang). In response to that, the Mamlatdar made a proposal to take action under sec.79A of the Bombay Land Revenue Code. The case was registered and notice was issued to the parties on 20.12.1999. On 06.01.2000, Talati-cum- Mantri of Village Dethali and heirs of the purchaser remained present, but the vendor, Shri Bhikha Ramu did not remain present. It was contended by the present petitioners- heirs of the purchaser

that they did not have any knowledge about the land being a new tenure land. It is not in dispute that Village Form 7/12 did not bear any remark to the effect that the land is a new tenure land. Collector passed order dated 07.01.2000 of entering the land in the name of the Government free from all encumbrances.

The petitioners filed a Revision Application before the Secretary (Appeals) being Revision Application No.10 of 2001, which was decided by the Secretary (Appeals) by judgement and order dated 12.01.2007/ 23.01.2007. The Secretary (Appeals) upheld the order of the Collector, however observed that as the applicants-petitioners herein are in possession since long, they may file an application before the Collector, Banaskantha praying for grant of the land and such application shall be decided by the Collector on merits.

4. Learned advocate Mr.Acharya for the petitioners vehemently submitted that in the present case the land was purchased prior to 1976 of which entry was made in 1976 which was confirmed in 1978. The case

is taken in scrutiny and the case for breach of condition was filed in the year 1999. He submitted that in between a long period of 23 years has passed, but generation got change as purchaser died and the petitioners are the heirs and legal representatives of the purchaser. He submitted that there are judgements to the effect that the Government if at all wants to take up any matter in scrutiny the same can be done within a reasonable time. He submitted that 'reasonable time' is defined not only by this Court, but also by the Hon'ble the Apex Court and '**one**' year is considered to be the reasonable time.

5. He submitted that therefore, in this case by no stretch of imagination period of 23 years can be said to be a reasonable time. More so, in light of the fact that the purchaser has died, it is the heirs of the purchaser, who are in possession of the land. He submitted that they are in possession of the land prior to 1976. Whereas the case for breach of condition is filed in 1999. He submitted that therefore, the orders passed by the Collector and the Secretary (Appeals) are required to be quashed and set aside.

6. Learned Assistant Government Pleader, Mr.Satyam Chhaya submitted that the Secretary (Appeals) has taken care of the interest of the parties, and therefore, observed that if the party-petitioners-heirs of the purchasers of the land if file an application before the Collector, the Collector will decide the same in accordance with law on merits. He submitted that it is not the case of the parties that there was no breach of condition. He submitted that the land was *Inam* land. It was granted to the vendor as *Inam* land and an entry to that effect was made in Village Form-6. He was not able to explain as to why similar 'note' was not made in Village Form 7/12.

7. Having heard the learned advocate for the parties, having perused the papers of the case, having perused the order and after taking into consideration the fact that after 23 years, the case was taken for scrutiny, the Court finds that there is gross delay on the part of the authorities. Therefore, the order passed by the Collector and the Secretary are quashed and set aside. Rule is made absolute with no order as to cost.

(RAVI R. TRIPATHI, J.)

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